



RAILROAD COMMISSION OF TEXAS

OFFICE OF GENERAL COUNSEL

OIL AND GAS DOCKET NO. 09-0262865

THE APPLICATION OF BOSQUE DISPOSAL SYSTEMS, LLC FOR COMMERCIAL DISPOSAL AUTHORITY PURSUANT TO STATEWIDE RULE 9 FOR THE BRYAN NO. 2 LEASE, WELL NO. 2, NEWARK, EAST (BARNETT SHALE) FIELD, WISE COUNTY, TEXAS

HEARD BY: Richard D. Atkins, P.E. - Technical Examiner
Marshall F. Enquist - Legal Examiner

APPEARANCES:

REPRESENTING:

APPLICANT:

Glenn E. Johnson
David Triana

Bosque Disposal Systems, LLC

PROTESTANT:

Blair Cunningham

Syed Jamal

PROCEDURAL HISTORY

Application Filed:	July 21, 2009
Protest Received:	July 13, 2009
Request for Hearing:	August 11, 2009
Notice of Hearing:	September 3, 2009
Hearing Held:	October 1, 2009
Proposal for Decision Issued:	October 15, 2009

EXAMINERS' REPORT AND PROPOSAL FOR DECISION

STATEMENT OF THE CASE

Bosque Disposal Systems, LLC ("Bosque") requests commercial disposal authority pursuant to Statewide Rule 9 for the Bryan No. 2 Lease, Well No. 2, Newark, East (Barnett Shale) Field, Wise County, Texas.

This application is protested by Syed Jamal who is a surface owner adjacent to the tract on which the proposed disposal well is located.

DISCUSSION OF THE EVIDENCE

Applicant's Evidence

The subject well has not yet been drilled, but Bosque proposes that the Bryan No. 2 Lease, Well No. 2, be drilled into the Ellenburger formation to a maximum depth of 12,000 feet. It is proposed that the well have 1,000 feet of 9 5/8" surface casing set with cement circulated from the casing shoe to the ground surface. The 7" longstring casing will be set at total depth of 12,000 feet with cement circulated from the casing shoe up to 7,000 feet (See attached Bosque Exhibit No. 15 - Wellbore Diagram). The proposed well is located off of FM 2264 approximately 12 miles southeast of Decatur, Texas. The Texas Commission on Environmental Quality ("TCEQ") recommends that usable-quality ground water be protected to a depth of 820 feet below the land surface.

The proposed injection will be through 4 1/2" tubing set on a packer at approximately 9,000 feet, but no higher than 100 feet above the top of the injection interval. The top of the Barnett Shale formation occurs at 7,570 feet and the top of the Ellenburger formation occurs at 7,902 feet. The proposed disposal interval is the Ellenburger formation between 9,000 feet and 12,000 feet. Bosque requests authority to dispose of a maximum of 25,000 BWPD with a maximum injection pressure of 3,500 psig. Bosque requests commercial authority to allow disposal of water produced from other operators in the area, predominantly from wells in the Newark, East (Barnett Shale) Field.

There are three wellbores within a 1/4 mile radius of the proposed Bryan No. 2 Lease, Well No. 2. All three wells are vertical Barnett Shale wells operated by Devon Energy Production Co., LP ("Devon"). Two of the wells are current producers and one well is temporarily abandoned. There are an additional four horizontal and eight vertical Barnett Shale wellbores within a 1/2 mile radius of the proposed injection well. All of the wells are cased and cemented in such a manner that the injected fluids will be confined to the disposal interval and usable quality ground water will be protected.

Bosque plans to use the well to dispose of produced water and frac water generated as a result of the active and ongoing development in this area. Bosque believes that additional disposal facilities are necessary to accommodate the development drilling. Bosque currently operates three other commercial disposal facilities that are located in Wise County. There is only one other commercial disposal well within 100 square miles. Accordingly, a disposal facility at this location will allow the operator in the area, Devon, to pipe in produced salt water from its leases and eliminate many of the salt water hauling trucks that operate in this area of the county.

Bosque submits that it has the expertise to build and manage the proposed facility. Bosque has a current approved Form P-5 (Organization Report), a posted \$25,000 financial assurance bond and no pending Commission enforcement actions.

Notice of the subject application was published in *The Bridgeport Index*, on June 25, 2009, a newspaper of general circulation in Wise County. A copy of the application was mailed on June 29, 2009, to the Wise County Clerk's Office, the surface owner, offsetting surface owners and operators within ½ mile of the proposed well.

Protestants' Evidence

Mr. Syed Jamal opposes approval of the application. Mr. Jamal owns 258 acres of surface property that is only 150 feet south from the proposed injection well. He believes that the presence of the facility will lower his property values. He testified that there are already 28 disposal wells in Wise County and he didn't feel that another disposal well was justified.

He is also concerned that injected salt water may not be confined to the Ellenburger formation and may pollute useable quality ground water, which would adversely impact the ranching operations on his property. Additionally, Mr. Jamal objects to movement of injected salt water onto his property below the surface.

EXAMINERS' OPINION

The examiners believe that this application should be approved. The Bryan No. 2 Lease, Well No. 2, will be completed in a manner which will confine disposal fluids to the proposed disposal interval in the Ellenburger formation. The surface casing will be set through the base of usable quality water and cemented to surface. The longstring production casing will be cemented in a manner to prevent the migration of fluids from the injection interval. There are only two vertical gas wells producing from the Barnett Shale formation and one temporarily abandoned well within the one-quarter mile radius of review. All of these wells are cased and cemented to protect usable quality ground water.

Approval of the requested permit is in the public interest, as Bosque has shown that additional salt water disposal capacity is needed in this area of significant development of the Barnett Shale. With the large fracture treatments necessary to stimulate wells in the Barnett Shale formation and the accompanying produced frac water, sufficient commercial disposal facilities like the proposed well are needed. There is only one other commercial disposal well within 100 square miles. Accordingly, a disposal facility at this location will allow the operator in the area, Devon, to pipe in produced salt water from its leases and eliminate many of the salt water hauling trucks that operate in this area of the county.

Protestant alleges that injected fluids will eventually cross the lease line of the Bryan No. 2 Lease, resulting in a trespass of injected fluids into the subsurface of their lands. This issue is properly within the jurisdiction of the courts because the Railroad Commission has no authority to determine title to land or property rights. Amarillo Oil Company v. Energy-Agri Products, Inc., 794 S.W.2d 20 (Tex. 1990) citing Railroad Comm'n v. City of Austin, 524 S.W.2d 262, (Tex. 1975), Jones v. Killingsworth, 403 S.W.2d 325, Tex 1965), Nale V. Carroll, 289 S.W.2d 743, (Tex. 1956), Ryan Consol. Petroleum Corp. v. Pickens, 285 S.W.2d 201 (Tex. 1955) and Magnolia Petroleum Co. v. Railroad Comm'n, 170 S.W.2d 189 (Tex. 1943).

Protestant also asserts a "takings" issue. The issue is that the trespass of injected fluids would result in the permanent, physical occupation of their subsurface. As stated above, the Commission has no authority in this area and the proper source of relief is the court system. However, the examiners note that even if injected fluids did occupy the disposal interval beneath protestant's land, nothing would prevent protestants from drilling and using their own disposal well in the same interval due to the migratory nature of injected fluids. In other words, it is debatable, and a matter for the courts, whether saltwater disposal operations rise to the level of a "permanent, physical occupation" of adjacent properties. "....The U. S. Supreme Court has consistently distinguished between flooding cases involving a permanent, physical occupation, on the one hand, and cases involving a more temporary invasion, or government action outside the owner's property that causes consequential damages within, on the other. A taking has always been found only in the former situation." (Referring to surface flooding, as by water impoundments) Loretto v. Teleprompter Manhattan CATV Corp., 458 U.S. 419, 428 (1982).

FINDINGS OF FACT

1. Notice of this application and hearing was provided to all persons entitled to notice at least ten (10) days prior to the date of the hearing. Notice of the subject application was published in *The Bridgeport Index*, on June 25, 2009, a newspaper of general circulation in Wise County.
2. Use of the Bryan No. 2 Lease, Well No. 2, as a commercial disposal well will not endanger any oil, gas or other mineral formation and will not cause the pollution of fresh water strata.
 - a. The Texas Commission on Environmental Quality recommends protection of useable quality water resources to a depth of 820 feet in the Bryan No. 2 Lease, Well No. 2.
 - b. The proposed well will have 1,000 feet of 9 5/8" surface casing set with cement circulated from the casing shoe to the ground surface. The 7" longstring casing will be set at total depth of 12,000 feet with cement circulated from the casing shoe up to 7,000 feet.

- c. Injection will be through tubing set on a packer at 9,000 feet.
 - d. The injected fluids will be confined to the injection interval in the Bryan No. 2 Lease, Well No. 2, as the proposed disposal interval is the Ellenburger formation between 9,000 feet and 12,000 feet, which is 1,100 feet below the top of the Ellenburger formation.
- 3. There are three wellbores within a ¼ mile radius of the proposed Bryan No. 2 Lease, Well No. 2. All of the wells are cased and cemented in such a manner that the injected fluids will be confined to the disposal interval and usable quality ground water will be protected.
- 4. Use of the Bryan No. 2 Lease, Well No. 2, as a commercial disposal well with a maximum injection volume of 25,000 BWPD and a maximum injection pressure of 3,500 psig is in the public interest.
 - a. There is a need for additional disposal capacity in the Newark, East (Barnett Shale) Field, which is undergoing significant development.
 - b. The new wells in the field require large fracture stimulations which use water.
 - c. There is only one other commercial disposal well within 100 square miles.
 - d. This commercial disposal facility will serve to reduce costs associated with disposal of fracture fluids and produced salt water and reduce truck traffic by allowing Devon to pipe in produced salt water from its leases and eliminate many of the salt water hauling trucks that operate in this area of the county.

CONCLUSIONS OF LAW

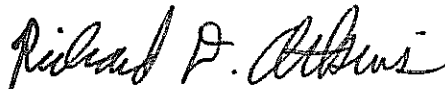
- 1. Proper notice was issued in accordance with the applicable statutory and regulatory requirements.
- 2. All things necessary to give the Railroad Commission jurisdiction to consider this matter have occurred.
- 3. The Railroad Commission has no authority to determine title to land or property rights.
- 4. Bosque Disposal Systems, LLC has met its burden of proof and its application satisfies the requirements of Chapter 27 of the Texas Water Code and the Railroad Commission's Statewide Rule 9.

5. Approval of the application for commercial disposal authority will not harm useable quality water resources and will not harm other mineral bearing formations.

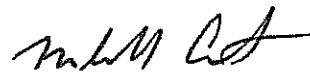
EXAMINERS' RECOMMENDATION

Based on the above findings of fact and conclusions of law, the examiners recommend that the application of Bosque Disposal Systems, LLC for commercial disposal authority for its Bryan No. 2 Lease, Well No. 2, be approved, as set out in the attached Final Order.

Respectfully submitted,



Richard D. Atkins, P.E.
Technical Examiner



Marshall F. Enquist
Legal Examiner